

September 12, 2008

George Heartwell, Mayor
City of Grand Rapids
300 Monroe, Room 660
Grand Rapids MI 49503

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Petition 08-165; Zoning of Cellular Towers

Dear Commissioners:

I am contacting you to seek your assistance in stopping the current Federal Communications Commission (FCC) proceeding that would effectively preempt local zoning of cellular towers.

On August 14, 2008 the FCC issued a public notice (known as WT Docket 08-165) seeking comment on a petition it has received from CTIA - The Wireless Association. This petition would, among other things, implement 45 and 75 day "shot clocks" for municipalities to act on local zoning approval for cell towers, with such applications "automatically deemed granted" if the deadlines are not met.

On a federal level, the FCC's proposed action directly violates the Telecommunications Act Congress passed in 1996 which preserves local zoning of cell towers (and directed the FCC to dismiss proceedings that would have restricted local zoning of cell towers). The 1996 Act found that the time for municipalities to act on cellular zoning requests are the "generally applicable time frames for zoning decisions", taking into account the "nature and scope of each request", and without giving "preferential treatment" to the cellular industry.

Locally, the proposal ignores the City's local zoning procedures, such as the need to notify area residents, scheduling and notice requirements for municipal meetings, the fact that zoning bodies don't meet daily or weekly, and people's ability to appeal decisions from (for example) a zoning commission to a board of zoning appeals or to a city council. In fact, the FCC's deadlines provide incentives for cell companies to delay and appeal zoning matters within our municipality so as to ensure that a deadline is not met.

The proposal also ignores the wide variation in the City and other municipalities across our state and nation, and the fact that each cell tower zoning application is unique. Complex or contentious applications may take more than 75 days to resolve. This is particularly the case for cell towers in residential areas where it takes time to conduct the engineering studies necessary to see whether there truly is a "gap" in service that needs to be filled, how tall a tower must be to fill the gap, what alternative solutions are available, and (if a tower in fact is needed) whether it needs

to be camouflaged in a sign or as a tree to preserve the character of the neighborhood.

Zoning is - - and always has been - - a matter of uniquely local concern. The FCC cannot be the "local zoning board" for cell towers nationwide. Congress recognized this when in 1996 it preserved local zoning of cell towers and told the FCC to get out of the cell tower zoning business. The FCC proposal ignores this Congressional direction, and I ask that you reaffirm congressional intent by telling the FCC not to adopt these proposals.

The City of Grand Rapids has a specific ordinance addressing wireless facility siting. The ordinance was enacted in November 2007 after a comprehensive public input process. The wireless ordinance requires Special Land Use approval by the city's Planning Commission for any new cellular towers, as well for as any new wireless facilities, including co-locations, in residentially-zoned areas. Furthermore, state and local law in Grand Rapids requires public notice and, in many cases, public hearings to ensure that the rights of the applicant and the public are preserved. These requirements are found in Section 5.9.35 of the Zoning Ordinance. In some jurisdictions, applications for facility sitting may be addressed administratively, without the need for public hearings; others are required by state and local law to follow certain processes and procedures. In addition, the City of Grand Rapids retains a wireless communications consultant, who reviews applications pursuant to federal, state and local law.

To this point in 2008, the City of Grand Rapids has had 14 applications for approval of wireless telecommunications facilities. Of these, 13 applications were for co-locations on existing facilities, and 1 was for a new tower.

The average time between filing of an application and final decision has been dependent on the circumstances relevant to each application, and the quality of the applicant's initial submittal. Staff often has to work with applicants to ensure that submittals are complete. Delays in the decision process are most often due to issues in the applicant's submittal. In comparison to other similar requests, collocations have a faster than average processing time, and new towers take the same amount of time to process as other requests, assuming that the initial submittal is complete.

The FCC has asked for comments in September, thus the urgency in our request for you to please stop this proceeding in the current budget process by telling the FCC that no funds can be spent on it. Please contact the FCC to register your strong opposition to this proceeding, and telling them to take no action regarding it.

Sincerely,

Hon. George K. Heartwell, Mayor

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